



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

Gerard Seeley, Jr.
Regional Director

**WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION
ORDER BY CONSENT
ISSUED TO
BFI WASTE SYSTEMS OF VIRGINIA, LLC
d/b/a
BFI KING AND QUEEN LANDFILL**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Waste Management Board and BFI Waste Systems of Virginia, LLC, for the purpose of resolving certain alleged violations of the Virginia Waste Management Act and the Virginia Solid Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Order.
6. "BFI" means BFI Waste Systems of Virginia, LLC, a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.

7. “Landfill” means the BFI King and Queen Sanitary Landfill, located at 1000 Iris Road, in Little Plymouth (King and Queen County), Virginia and operating under DEQ Solid Waste Permit No. 554.
8. “PRO” means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
9. “VSWMR” means the Virginia Solid Waste Management Regulations 9 VAC 20-80-10 *et seq.*

SECTION C: Findings of Fact and Conclusions of Law

1. The BFI King and Queen Sanitary Landfill (“landfill”) is a “sanitary landfill” as that term is defined in 9 VAC 20-80-10 of the VSWMR. The landfill is located in Little Plymouth, Virginia, and is operated by BFI Waste Systems of Virginia, LLC (“BFI”).
2. The landfill currently operates under DEQ Solid Waste Permit Number 554 (“SWP 554”).
3. On February 27, 2006, DEQ staff conducted an inspection of the Facility. The inspection, a records review, and subsequent discussions with BFI revealed the following:
 - a. DEQ staff observed two red bags labeled as Regulated Medical Waste (“RMW”) in the active working face of the landfill and pointed them out to facility staff. The treatment of the bags by the operator appeared to indicate that he could not properly handle RMW, and that the training conducted by BFI in accordance 9 VAC 20-80-113 and 9 VAC 20-80-250.C.1.d was therefore inadequate. BFI disagrees with the allegations of inadequate training and unauthorized waste handling; however, the facility held an additional safety meeting with employees to review RMW and unauthorized waste handling and restrictions. A follow-up inspection conducted by DEQ staff on June 13, 2006 indicated that the facility had corrected any potentially inadequate training and was properly responding to RMW that may be delivered.
 - b. The facility appeared to be operating three working faces, one of which appeared to be at least 300 feet in width. The Facility’s Operations Manual, which is incorporated by Section B.7 of SWP 554, specifies that the facility will only operate one working face, with an anticipated maximum width of 125 feet. DEQ alleges that the facility is therefore not in compliance with its permit. Permit compliance is required by 9 VAC 20-80-240.B. BFI disagrees with this allegation, and contends that two of the three observed working faces were ramp construction projects necessary to access future lifts, and that to have limited the size of the affected areas would have constituted a serious safety infraction. BFI has also stated that it believes that the operations

- manual language allows for the working face to be determined by specific factors each day and does not specifically limit the width of the working face. A permit amendment request has been submitted to DEQ which will address working face size.
- c. DEQ staff observed an area surrounding a repaired gas well that had not received daily cover, as required by 9 VAC 20-80-250.C.2.c. Cover was replaced shortly after the inspection.
 - d. DEQ staff observed two piles of what appeared to be auto shredder fluff without required daily cover. BFI has stated that this material was auto shredder silt, which does not require daily cover. Regardless, the facility no longer accepts auto shredder silt or fluff.
 - e. Litter was observed along the perimeter road and in the surrounding vegetation although the working face was located on the opposite side of the property. Winds gusted up to 29 miles per hour on the date of the inspection. Fencing installed along the side slope of the landfill was not adequate to contain litter to the refuse holding and operating areas, as required by 9 VAC 20-80-250.C.13.a. An inspection conducted by DEQ staff on June 13, 2006 indicates that additional fencing has been installed and the facility has ordered additional temporary fencing that will be used to improve litter containment.
4. On March 28, 2006, Notice of Violation (“NOV”) No. 2006-03-PRO-601 was issued to BFI for the violations of SWP 554 and the VSWMR discussed in paragraph 3, above.
5. On April 20, 2006, a meeting was held between representatives of BFI and DEQ. During that meeting, and in subsequent correspondence to DEQ, the facility demonstrated to DEQ that it has resolved items 3a, 3d, and 3e above without any admissions of such items constituting a breach of regulatory requirements. A permit amendment to resolve item 3b is pending with DEQ. The regulatory requirements pertaining to item 3c, which had not been met at the time of the inspection, were subsequently implemented to the satisfaction of DEQ.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455(F), orders BFI, and BFI voluntarily agrees to perform the actions described in Appendix A of this Order. In addition, BFI voluntarily agrees to pay a civil charge of \$18,320 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the “Treasurer of Virginia” and shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check, BFI shall include its Federal Identification Number.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of BFI for good cause shown by BFI, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those alleged violations specifically identified herein, including those matters addressed in the Notice of Violation issued to BFI by DEQ on March 28, 2006. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, BFI admits the jurisdictional allegations, factual findings, and conclusions of law contained herein, except BFI does not admit the conclusions of law contained in Section C.3.a, C.3.b, C.3.d and C.3.e, above.
4. BFI consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. BFI declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by BFI to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. BFI shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. BFI shall show

that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. BFI shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and BFI. Notwithstanding the foregoing, BFI agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to BFI. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve BFI from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, BFI Waste Systems of Virginia, LLC voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2006.

Gerard Seeley, Jr., Regional Director
Department of Environmental Quality

BFI Waste Systems of Virginia, LLC
Notary Public

BFI Waste Systems of Virginia, LLC voluntarily agrees to the issuance of this order

Date: 8/22/06

By: James H. Zieche
James H. Zieche, Vice President
BFI Waste Systems of Virginia LLC

Commonwealth of Virginia

(City) County of Richmond

The foregoing document was signed and acknowledged before me this 22nd day of
August, 2006, by JAMES H. ZIECHE
(Name)

DISTRICT MANAGER of BFI Waste Systems of Virginia, LLC, on behalf of the
(Title)

Corporation

[Signature]
Notary Public

My commission expires: NOV 30, 2006

APPENDIX A

1. **No later than October 30, 2006**, BFI shall submit to DEQ a request for a minor permit amendment to increase the working face size and number of working faces at the landfill.